

HOUSE BILL NO. 158

INTRODUCED BY J. MCKENNEY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING AND CLARIFYING INCOME TAX WITHHOLDING LAWS AS A RESULT OF THE TRANSFER OF THE ADMINISTRATION OF THE UNEMPLOYMENT INSURANCE TAX FROM THE DEPARTMENT OF REVENUE TO THE DEPARTMENT OF LABOR AND INDUSTRY; ELIMINATING THE REQUIREMENT THAT THE STATE TAX APPEAL BOARD CONSIDER A DIRECT APPEAL FROM A DEPARTMENT OF REVENUE DETERMINATION REGARDING THE REPORTING OF WAGES EARNED BY AN UNEMPLOYMENT INSURANCE BENEFIT CLAIMANT; REVISING THE DEFINITIONS OF "EMPLOYEE", "EMPLOYER", AND "WAGES" AND DEFINING "SOLE PROPRIETOR" FOR WITHHOLDING TAX PURPOSES; ADOPTING THE INTERNAL REVENUE CODE DEFINITION OF "WAGES"; REVISING THE EXCEPTIONS TO THE DEFINITION OF "WAGES"; ELIMINATING CERTAIN DEFINITIONS AS THEY APPLY TO INCOME WITHHOLDING TAXES; CLARIFYING THE LIABILITY OF EMPLOYERS FOR FILING ANNUAL WITHHOLDING TAX STATEMENTS AND FOR THE PAYMENT OF WITHHOLDING TAXES; REVISING THE SCHEDULES FOR REMITTING WITHHOLDING TAXES; CLARIFYING PENALTIES AND INTEREST FOR NONCOMPLIANCE WITH WITHHOLDING TAX PROVISIONS; REVISING THE PROVISIONS FOR THE FILING OF WITHHOLDING TAXES ELECTRONICALLY; AMENDING SECTIONS 15-2-302, 15-30-201, 15-30-202, 15-30-203, 15-30-204, 15-30-209, 15-30-210, 15-30-248, AND 39-51-2402, MCA; REPEALING SECTIONS 15-30-249, 15-30-250, 15-30-251, 15-30-256, AND 15-30-257, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2-302, MCA, is amended to read:

"15-2-302. Direct appeal from department decision to state tax appeal board -- hearing. (1) A person may appeal to the state tax appeal board a final decision of the department of revenue involving:

- (a) property centrally assessed under chapter 23;
- (b) classification of property as new industrial property;
- (c) any other tax, other than the property tax, imposed under this title; or

(d) any other matter in which the appeal is provided by law.

(2) ~~(a) Except as provided in subsection (2)(b), the~~ The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department's final decision. The complaint must set forth the grounds for relief and the nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

~~(b) An appeal from the department's determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department is initiated by filing a complaint with the board within 10 days following receipt of notice of the department's final determination. The board shall promptly mail a copy of the complaint to each interested party at the last known address of each party.~~

(3) The department shall file with the board an answer within 30 days following filing of a complaint; ~~or in cases involving a determination of whether wages earned by an unemployment insurance benefit claimant were properly reported to the department, any interested party, as defined in 15-30-257(1)(e), and the department may file an answer with the board within 10 days after receipt of a copy of the complaint filed with the board, and at that time mail a copy to the complainant. The answer must set forth the department's response to each ground for and type of relief demanded in the complaint.~~

(4) ~~(a) Except as provided in subsection (4)(b), the~~ The board shall conduct the appeal in accordance with the contested case provisions of the Montana Administrative Procedure Act.

~~(b) (i) In an appeal regarding the determination of whether wages earned by an unemployment insurance claimant were properly reported to the department, the appeal must be conducted informally and may, in the discretion of the board, be conducted by telephone or other electronic means. The appeal is not a contested case under provisions of the Montana Administrative Procedure Act. The board, in conducting the hearing or making its decision, is not bound by the Montana Rules of Evidence.~~

~~———— (ii) The board shall make its final decision within 45 days of the date the appeal is received by the board.~~

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to the provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303."

Section 2. Section 15-30-201, MCA, is amended to read:

"15-30-201. Definitions. When used in 15-30-201 through 15-30-209, the following definitions apply:

~~(1) "Agricultural labor" means all services performed on a farm or ranch in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.~~

~~———(2) "Domestic or household service" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties such as home health care or domiciliary care.~~

~~———(3) (a) "Employee" means:~~

~~(i) an individual who performs services for another individual or an organization having the right to control the employee as to the services to be performed and as to the manner of performance;~~

~~(a)(ii) an officer, employee, or elected public official of the United States, the state of Montana, or any political subdivision of the United States or Montana or any agency or instrumentality of the United States, the state of Montana, or a political subdivision of the United States or Montana;~~

~~(b)(iii) an officer of a corporation;~~

~~(c) any individual who performs services for another individual or organization having the right to control the employee as to the services to be performed and as to the manner of performance;~~

~~(d)(iv) all classes, grades, or types of employees including minors and aliens, superintendents, managers, and other supervisory personnel.~~

~~(b) The term does not include a sole proprietor performing services for the sole proprietorship.~~

~~(4)(2) "Employer" means:~~

~~(a) the person for whom an individual performs or performed any service, of whatever nature, as an employee of the person or, if the person for whom the individual performs or performed the services does not have control of the payment of wages for the services, the person having control of the payment of wages;~~

~~(b) a person who pays \$1,000 or more in wages within the current calendar year;~~

~~———(c) a person who pays \$1,000 or more in cash for domestic or household service in any quarter during the current calendar year;~~

~~———(d) any individual or organization that has or had in its employ one or more individuals performing services for it within this state, including:~~

~~(i) a state government and any of its political subdivisions or instrumentalities;~~

1 (ii) a partnership, association, trust, estate, joint-stock company, insurance company, limited liability
2 company, or a limited liability partnership that has filed with the secretary of state, or domestic or foreign
3 corporation;

4 (iii) or the a receiver, trustee, including a trustee in bankruptcy, trustee or the trustee's successor, or;
5 (iv) a legal representative of a deceased person who has or had in its employ one or more individuals
6 performing services for it within this state; or

7 ~~(e)(c)~~ any person found to be an employer under Title 39, chapter 51, for unemployment insurance
8 purposes, is considered an employer for state income tax withholding purposes or under Title 39, chapter 71,
9 for workers' compensation purposes.

10 ~~(5) "Independent contractor" means an individual who renders service in the course of an occupation~~
11 ~~and:~~

12 ~~—— (a) has been and will continue to be free from control or direction over the performance of the services;~~
13 ~~both under contract and in fact; and~~

14 ~~—— (b) is engaged in an independently established trade, occupation, profession, or business.~~

15 ~~(6)(3)~~ "Lookback period" means the 12-month period ending the preceding June 30.

16 ~~(7) (a) "Wages"; unless specifically exempted under subsection (7)(b); means all remuneration for~~
17 ~~services performed by an employee for the employer, including the cash value of all remuneration paid in any~~
18 ~~medium other than cash, and includes but is not limited to the following:~~

19 ~~—— (i) commissions, bonuses, and remuneration paid for overtime work, holidays, vacations, and sickness~~
20 ~~periods;~~

21 ~~—— (ii) severance or continuation pay, backpay, and any similar pay made for or in regard to previous~~
22 ~~service by the employee for the employer, other than retirement or pension benefits from a qualified plan; and~~

23 ~~—— (iii) except those tips that are exempted in subsection (7)(b)(v), tips or other gratuities received by the~~
24 ~~employee, to the extent that the tips or gratuities are documented by the employee to the employer for tax~~
25 ~~purposes.~~

26 ~~—— (b) The term "wages" does not include:~~

27 ~~—— (i) the amount of any payment made by the employer for employees, if the payment was made for:~~

28 ~~—— (A) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal~~
29 ~~Revenue Code;~~

30 ~~—— (B) sickness or accident disability under a workers' compensation policy;~~

~~1 (C) medical or hospitalization expenses in connection with sickness or accident disability, including~~
~~2 health insurance for the employee or the employee's immediate family; or~~
~~3 (D) death, including life insurance for the employee or the employee's immediate family;~~
~~4 (ii) compensation in the form of meals and lodging, provided the compensation is not includable in gross~~
~~5 income for state individual income tax purposes;~~
~~6 (iii) distributions from a multiple employer welfare arrangement, as defined in 29 U.S.C. 1002(40)(A),~~
~~7 to a qualified individual employee;~~
~~8 (iv) payments made by an employee to any group plan or program to the extent that the payments are~~
~~9 not taxable for state income tax purposes;~~
~~10 (v) tips or gratuities that are in accordance with 26 U.S.C. 3402(k) or service charges that are covered~~
~~11 by 26 U.S.C. 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983,~~
~~12 received by persons for services rendered by them to patrons of premises licensed to provide food, beverage,~~
~~13 or lodging; or~~
~~14 (vi) payments that may not be taxed under federal law.~~

15 (4) "Sole proprietor" means an individual doing business in a noncorporate form and includes the
16 member of a single-member limited liability company that is a disregarded entity if the member is an individual.

17 (5) (a) Except as provided in subsection (5)(b), "wages" has the meaning provided in section 3401 of
18 the Internal Revenue Code, 26 U.S.C. 3401.

19 (b) The term does not include:

20 (i) tips and gratuities exempt from taxation under 15-30-111;

21 (ii) health insurance premiums attributed as income to an employee under federal law that are exempt
22 from taxation under 15-30-111;

23 (iii) unemployment compensation, including supplemental unemployment compensation treated as
24 wages under section 3402 of the Internal Revenue Code, 26 U.S.C. 3402, that is excluded from gross income
25 as provided in 15-30-101; or

26 (iv) any amount paid a sole proprietor. (Subsection ~~(7)(b)(v)~~ (5)(b)(i) terminates on occurrence of
27 contingency--sec. 3. Ch. 634, L. 1983.)"

Section 3. Section 15-30-202, MCA, is amended to read:

"15-30-202. Withholding of tax from wages. (1) Each employer, ~~except an independent contractor,~~

1 making payment of wages for employment as defined in 15-30-256 shall withhold from wages a tax determined
2 in accordance with the withholding tax tables prepared and issued by the department.

3 (2) An employer who maintains two or more separate establishments within this state is considered to
4 be a single employer for the purposes of this part.

5 (3) A disregarded entity and its owner are considered to be a single employer for the purposes of this
6 part."

7
8 **Section 4.** Section 15-30-203, MCA, is amended to read:

9 **"15-30-203. Employer liable for employment withholding taxes and statements.** (1) Each employer
10 is liable for the ~~reports and~~ payments required by 15-30-204, the amounts required to be deducted and withheld
11 under this part, and the annual statements required by 15-30-206 and 15-30-207. The payments required by
12 15-30-204 and the amounts required to be deducted and withheld, plus interest due ~~on the amounts,~~ are a tax.
13 With respect to the tax, the employer is the taxpayer.

14 (2) The officer of a corporation whose responsibility it is to collect, truthfully account for, and pay to the
15 state the amounts withheld from the corporation's employees and who fails to pay the withholdings is liable to
16 the state for the amounts withheld and the penalty and interest due on the amounts.

17 (3) (a) Each officer of the corporation is individually liable along with the corporation for filing ~~reports~~
18 statements to the extent that the officer has access to the requisite records and for unpaid taxes, penalties, and
19 interest upon a determination that the officer:

20 (i) possessed the responsibility to file ~~reports~~ statements and pay taxes on behalf of the corporation;
21 and

22 (ii) possessed the responsibility on behalf of the corporation for directing the filing of tax ~~reports~~
23 statements or the payment of other corporate obligations and exercised that responsibility, resulting in the
24 corporation's failure to file ~~reports~~ statements required by this part or pay taxes due as required by this part.

25 (b) In determining which corporate officer is liable, the department is not limited to considering the
26 elements set forth in subsection (3)(a) to establish individual liability and may consider any other available
27 information.

28 (4) In the case of a corporate bankruptcy, the liability of the individual remains unaffected by the
29 discharge of penalty and interest against the corporation. The individual remains liable for any ~~reports~~
30 statements and the amount of taxes, penalties, and interest unpaid by the corporation.

(5) For the purpose of determining liability for the filing of ~~reports~~ statements and the remittance of taxes, penalties, and interest owed under this part:

(a) each partner of a partnership is jointly and severally liable, along with the partnership, for any statements, taxes, penalties, and interest due while a partner;

(b) each member of a member-managed limited liability company must be that is treated as a partnership with liability for filing reports and remitting or as a corporation for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest owed extending to each member who was a member at the time the report or taxes were due while a member;

(c) the member of a single-member limited liability company that is disregarded for income tax purposes is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and interest due while a member; and

~~(6)(d) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by each manager of a manager-managed limited liability company, the managers of the limited liability company are jointly and severally liable, along with the limited liability company, for reports and any statements, taxes, penalties, and interest owed due while a manager.~~

~~(7) For determining personal liability for the failure to file reports and remit taxes, penalties, and interest owed by a limited liability partnership, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for reports and any taxes, penalties, and interest due.~~

~~(8)(6)~~ If the employer fails to deduct and withhold the amounts specified in 15-30-202 and the tax against which the deducted and withheld amounts would have been credited is paid, the amounts required to be deducted and withheld may not be collected from the employer."

Section 5. Section 15-30-204, MCA, is amended to read:

"15-30-204. Reporting and remittance requirements Schedules for remitting income withholding taxes -- records. (1) ~~For the purposes of this section, employers~~ Each employer shall remit ~~their the~~ taxes in accordance with the appropriate remittance schedule withheld from employee wages as follows:

(a) ~~Employers~~ An employer whose total liability for state income tax withholding during the preceding lookback period was \$12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) ~~Employers~~ An employer whose total liability for state income tax withholding during the preceding

lookback period was less than \$12,000 but more than \$1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) ~~Employers~~ An employer whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 shall remit on ~~a "quarterly schedule"~~ an "annual schedule" for which the remittance due date is on or before ~~the last day of the month following the close of each calendar quarter~~ February 28 of the year following payment of wages.

~~(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding during the preceding lookback period was less than \$1,200 may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages.~~

~~———— (2) (a) Every employer is required to file a report quarterly in the form required by the department.~~

~~———— (b) The report is due on or before the last day of the month following the close of the calendar quarter.~~

~~———— (c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.~~

(d) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter" ~~using alternative reporting methods provided in department rules~~ withholding to remit for a remittance period shall, on or before the due date of the applicable remittance schedule, submit a payment coupon showing that a zero amount is being remitted.

~~(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207.~~

~~———— (3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.~~

~~———— (b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion~~

(2) An employer who has not complied with the requirements of this section shall, upon written notice from the department, remit on the monthly schedule described in subsection (1)(b).

~~(e)(3)~~ On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the

department's review of the preceding lookback period.

~~(d)(4) Except as provided in subsection (3)(g), a~~ A new employer or an employer with no filing history is subject to the ~~quarterly~~ monthly remittance schedule in subsection ~~(4)(e)~~ (1)(b) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

~~(e)(5) An employer who is subject to the quarterly schedule in subsection (4)(c) may elect to remit payments on a more frequent basis than is required by subsection (1). An employer who is on an annual schedule may elect to remit monthly or quarterly payments.~~

~~———(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.~~

~~———(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding is not expected to exceed \$1,199 for the calendar year may remit according to the annual schedule and report annually on or before February 28.~~

~~(h)(6)~~ (h)(6) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.

~~(4)(7)~~ (4)(7) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

~~(5)(8)~~ (5)(8) Each employer shall keep ~~true and~~ accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."

Section 6. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer -- penalties, interest, and remedies. (1) The department shall, as provided in 15-1-216, add penalty and interest to the amount of all delinquent withholding taxes.

~~(2) The first time in any consecutive 3-year period that an employer files a report or remits a tax after~~

~~the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, that the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.~~

~~——— (3) A late report penalty may not be assessed under 15-1-216 if an employer files the late report prior to the issuance of a notice of delinquent report.~~

~~——— (4) A late payment penalty may be waived pursuant to 15-1-206 if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement voids the waiver and the penalty must be recomputed from the due date on the unpaid tax.~~

~~——— (5) (a) A summons penalty of \$50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a summons pursuant to 15-1-301.~~

~~——— (b) If an employer fails to honor the summons provided in subsection (5)(a), an additional \$100 penalty must be added to the liability.~~

~~(6)(2) In addition to any other penalty provided by law the penalties imposed by 15-1-216, the failure of an employer to furnish a wage and tax statement, as required by 15-30-207(1), subjects the employer to a penalty of \$5 for each failure, with a minimum of \$50.~~

~~(7) Penalties may be waived by the department upon a showing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.~~

~~——— (8) If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.~~

~~——— (9) The tax lien provided for in subsection (8) is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.~~

~~——— (10) A grantor who signs and delivers to the third party an affidavit as provided in subsection (9) is subject to the penalties imposed by 15-30-321(1) if any part of the affidavit is untrue. The department may bring an action as provided in 15-30-321(1) in the name of the state to recover the civil penalty and any delinquent taxes.~~

~~(44)(3) All of the remedies available to the state for the administration, enforcement, and collection of~~

income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically ~~addressed~~ provided for in this part."

Section 7. Section 15-30-210, MCA, is amended to read:

"15-30-210. ~~Electronic funds transfer and electronic reporting~~ Remitting withholding taxes electronically -- employer option -- timely remittance. (1) ~~An~~ Subject to subsection (2), an employer, ~~within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to remit and file state income tax withholding electronically. An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department.~~

~~—— (2) An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a any format established and approved by the department.~~

(2) An employer shall obtain the department's prior approval before the employer may remit withholding taxes by electronic funds transfer.

(3) If an employer remits withholding taxes electronically, the remittance is considered timely if made within 5 days after the due date of the payment."

Section 8. Section 15-30-248, MCA, is amended to read:

"15-30-248. Determination of employer status. A final determination by either the department of labor and industry or the workers' compensation court that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of ~~chapter 30, part 2; this chapter~~ is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding. ~~A final decision of the workers' compensation court may be appealed as provided in 39-71-2904."~~

Section 9. Section 39-51-2402, MCA, is amended to read:

"39-51-2402. Initial determination -- redetermination. (1) A representative designated by the department and referred to as a deputy shall promptly examine the claim, and, on the basis of the facts the

1 deputy has found, the deputy shall determine whether or not the claim is valid. If the claim is valid, the deputy
2 will determine the week the benefits commence, the weekly benefit amount payable, and the maximum benefit
3 amount. The deputy may refer the claim or any question involved in the claim to an appeals referee who shall
4 make the decision on the claim in accordance with the procedure prescribed in 39-51-2403. ~~With respect to a~~
5 ~~determination, redetermination, or appeal by a claimant involving wages, the issue must be resolved in~~
6 ~~accordance with procedures for unemployment insurance benefit claimant appeals, as prescribed in 15-2-302~~
7 ~~and 15-30-257 during the time that the department delegated the duties associated with the administration of~~
8 ~~unemployment insurance contributions to the department of revenue pursuant to 39-51-301.~~ The deputy shall
9 promptly notify the claimant and any other interested party of the decision and the reasons for reaching the
10 decision.

11 (2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and
12 other interested parties of the amended decision and the reasons for the decision.

13 (3) A determination or redetermination of an initial or additional claim may not be made under this
14 section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is
15 mailed to each interested party.

16 (4) A determination or redetermination is final unless an interested party entitled to notice of the decision
17 applies for reconsideration of the determination or appeals the decision within 10 days after the notification was
18 mailed to the interested party's last-known address. The 10-day period may be extended for good cause.

19 (5) Except as provided in subsection (6), a redetermination of a claim for benefits may not be made after
20 2 years from the date of the initial determination.

21 (6) A redetermination may be made within 3 years from the date of the initial determination of a claim
22 if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact
23 by the claimant or the employer."
24

25 NEW SECTION. Section 10. Repealer. Sections 15-30-249, 15-30-250, 15-30-251, 15-30-256, and
26 15-30-257, MCA, are repealed.
27

28 NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that matured,
29 penalties that were incurred, or proceedings that were begun before [the effective date of this act].
30

1 NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

2

3 NEW SECTION. **Section 13. Retroactive applicability.** [This act] applies retroactively, within the

4 meaning of 1-2-109, to wages paid after December 31, 2004.

5 - END -